

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY
STATE OF TENNESSEE**

LEAGUE OF WOMEN VOTERS OF)
TENNESSEE;)
ALLISON CAVOPOL;)
CAROL COPPINGER, on her own behalf and)
As next friend of SAMUEL SHIRLEY;)
REVEREND JERRY CRISP;)
TOM JOHN, M.D.;)
TERRELL McDANIEL, Ph.D.;)
BRIAN PADDOCK;)
RANDALL RICE;)
MERYL RICE; and)
REVEREND JAMES THOMAS,)

Plaintiffs,

v.

JULIE MIX McPEAK, Tennessee Commissioner)
of Commerce and Insurance;)
TENNESSEE DEPARTMENT OF)
COMMERCE AND INSURANCE; and)
ROBERT E. COOPER, JR., Tennessee)
Attorney General and Reporter,)

Defendants.

No. 13-1365-IV

2013 OCT -7 PM 3:54
DAVIDSON COUNTY CHANCERY CT
DC&H

AGREED FINAL ORDER

Pursuant to Tenn. R. Civ. P. 58 and the agreement of the parties (as evidenced by the signatures of counsel below), the Court enters judgment as follows:

1. The Emergency Rules (*Navigator, Non-Navigator Assistor and Certified Application Counselor Registration Requirements*, Department of Commerce and Insurance Emergency Rules Chapter 0780-01-55) only apply to persons, including entities, (1) who are actually registered, are in the process of registering, or are required by federal law to be registered, as Navigators or Certified Application Counselors with the federal government in regard to the federal Patient Protection and Affordable Care Act ("ACA"); or (2) who represent

themselves as being Navigators or Certified Application Counselors pursuant to federal law. The federal ACA, including 42 USC 18031 and the United States Department of Health and Human Services (“HHS”) Rules (*see* 45 CFR Part 155, e. g., §155.205, §155.225), govern what persons and entities are required by federal law to be registered as Navigators or CACs, and are being interpreted by HHS through such information as the “Common Questions and Answers [of the HHS/Center for Medicare/Medicaid Services (“CMS”)] On Designation of Certification Application Counselor Organizations in Federally-Facilitated Marketplaces”[<http://marketplace.cms.gov/help-us/common-qandas-about-cac-designation.pdf>].

Pursuant to these sources, federal law currently provides that only the following persons and entities are required to register as Navigators or CACs: (1) persons or entities carrying out Navigator functions under the terms of a Navigator grant from an Exchange; and (2) health center outreach and assistance workers in health centers that received Outreach and Enrollment Assistance grants from the Health Resources and Services Administration (“HRSA”).

2. So long as a person or entity does not actually register, is not in the process of registering, and is not required by federal law to be registered as a Navigator or Certified Application Counselor with the federal government, or does not represent himself, herself, or itself as having the status of a federally-recognized Navigator or Certified Application Counselor, the Emergency Rules do not apply to that person or entity.

3. (a) Rule 0780-01-55-.06(1)(b) does not prohibit any activity authorized or required of Navigators or Certified Application Counselors under federal law. For example, the federal ACA, including 42 USC 18031 and the HHS Rules (*see* 45 CFR Part 155, e. g., §155.225), govern the federal duties and requirements of Navigators and Certified Application Counselors, and are being interpreted by HHS through such information as the “Common Questions and Answers [of the HHS/CMS] On Designation of Certification Application

Counselor Organizations in Federally-Facilitated Marketplaces”

[<http://marketplace.cms.gov/help-us/common-qandas-about-cac-designation.pdf>].

(b) These federal sources currently provide, in part, the following regarding required activities of Navigators or Certified Application Counselors by federal law: Navigators and Certified Application Counselors may help consumers through the process of selecting a plan, and must give the consumer information about the full range of qualified health plan options and insurance affordability programs for which they are eligible. Navigators and Certified Application Counselors may not direct the consumer towards a specific plan but may give the consumer information that allows the consumer to make an informed decision as to which plan is in the consumer’s best interest. The duties of a Navigator or Certified Application Counselor include helping individuals compare health plans, benefits, and carrier networks and assisting individuals in choosing a health plan, as long as the Navigator or Certified Application Counselor does not choose a plan or enroll someone in a plan. A Navigator or Certified Application Counselor may only assist with plan selection and enrollment. Navigators must provide fair and impartial information concerning enrollment in qualified health plans, per 42 USC 18031(i)(3), and Certified Application Counselors must provide this assistance in the consumer’s best interest.

4. Upon its entry by the Court, the Defendant Commissioner will post a copy of this Agreed Order on the website of the Department of Commerce and Insurance. Defendant Commissioner will also post a “Frequently Asked Questions” (FAQ) on the website of the Department of Commerce and Insurance explaining in plain language the terms of this Agreed Order.

5. The Defendant Commissioner will withdraw FAQ #1, dated September 20, 2013, and remove it from website of the Department of Commerce and Insurance


6. This Order only applies to Defendants' enforcement of the Emergency Rules and does not affect Defendants' enforcement of any other laws, including the Tennessee Insurance Code, such as Tennessee Code Annotated, Title 56, Chapter 6 (which is the "Tennessee Insurance Producer Licensing Act").

7. The case is dismissed without prejudice.

8. Each party will bear their own attorneys fees.

9. Each side (Plaintiffs and Defendant Attorney General) shall share equally in paying any outstanding court costs.

IT IS SO ORDERED:


Chancellor Russell Perkins

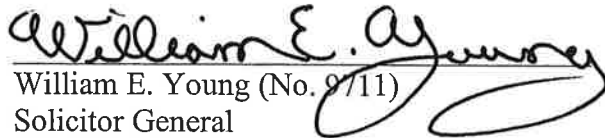
Submitted for entry:



Christopher E. Coleman (No. 24950)
Michele Johnson (No. 16756)
Kristin Ware (No. 29444)
TENNESSEE JUSTICE CENTER
301 Charlotte Avenue
Nashville, TN 37201
Phone: (615) 255-0331
Fax: (615) 255-0354

Michael G. Abelow (No. 26710)
SHERRARD & ROE, PLC
150 Third Avenue South, Suite 1100
Nashville, TN 37201
Phone: (615) 742-4532
Fax: (615) 742-4539

Attorneys for Plaintiffs


William E. Young (No. 9711)
Solicitor General

Sarah Ann Hiestand (No. 14217)
Senior Counsel, Financial Division
Steven A. Hart (No. 7050)
Special Counsel

TENNESSEE ATTORNEY GENERAL'S OFFICE
425 Fifth Avenue North, 2nd Floor
P.O. Box 20207
Nashville, TN 37202-0207
Phone: (615) 741-6035
Fax: (615) 532-8223

Attorneys for Defendants